REMARKS

Applicants file this preliminary amendment along with a Request for Continued Examination (RCE) application. Prior to examination of the RCE, please enter the amendments and conduct an examination based on the claim set listed above. Claims 1-41 have been cancelled. Applicants submit that new claims 42-82 are in condition for allowance, and notice to that effect is respectfully requested.

I. INTERVIEW SUMMARY - NOVEMBER 13, 2008

Applicants wish to thank Examiner Louie for his courtesy in participating in a telephone interview on November 13, 2008. Details of the November 13, 2008 interview are provided below.

First, it is noted that the undersigned attorney and the Examiner previously participated in a teleconference on October 9, 2008 regarding the rejections in the Final Office Action dated July 18, 2008. In the October 9, 2008 call, the various outstanding 35 U.S.C. § 103(a) rejections over Selph in view of Shear were discussed. (See "Interview Summary" section in the "Amendment and Response After Final Office Action" filed on October 10, 2008). In short, the undersigned attorney explained to Examiner Louie that the cited passage in Shear (at col. 9, lines 64-66) was egregiously different than the subject matter of applicants' claims, and in particular, dependent claims 5-13, 15, 18, and 23. In very sharp contrast to Shear, the undersigned attorney explained that several of applicants' claims are, in part, directed to the protective actions taken by applicants' energy management device.

Accordingly, in the "Amendment and Response After Final Office Action" filed on October 10, 2008, applicants "respectfully request[ed] that Examiner Louie reconsider his rejections in the Final Office Action dated July 18, 2008, particularly with respect to dependent claims 5-13, 15, 18 and 23 in view of Selph and Shear... If rejections stemming from the Shear reference are maintained, applicants respectfully request that Examiner Louie more specifically point out the rationale for the rejections instead of relying on the significantly different passage cited at col. 9, lines 64-66."

Applicants then received an Advisory Action dated October 27, 2008, in which Examiner Louie vaguely upheld the final rejections based on Selph and Shear, without further explanation,

indicating "[t]he examiner apologises for not contacting the applicants' representative to discuss his decision (as discussed/requested) due to timing circumstances which made it impossible." (See Advisory Action dated October 27, 2008 at page 3).

Subsequently, the undersigned attorney contacted Examiner Louie by telephone for further explanation and clarification regarding the rejections to dependent claims 5-13, 15, 18 and 23 in view of Selph and Shear. The undersigned attorney invited a teleconference with Examiner Louie's supervisor, to which Examiner Louie replied that he would seek reconsideration of the pending rejections from another (more senior) Examiner.

In the November 13, 2008 phone call, Examiner Louie and the undersigned attorney discussed the results of the reconsideration by the other (more senior) Examiner. With regard to the dependent claims 5-13, 15, 18, and 23, Examiner Louie conveyed that the other Examiner performed a new patentability search and uncovered the following references of potential interest: a) U.S. Pat. 7,007,171 ("Butturini"); and b) U.S. Pat. Pub. 2002/0002683 ("Benson"). Examiner Louie and the undersigned attorney discussed possible amendments but no agreement was reached.

II. NEW CLAIM SETS

Applicants submit new claims 42-82 herewith, and respectfully request allowance of these new claims. It is noted that new independent claims 42, 65 and 77 at least partially factor into account the feedback received from the October 9, 2008 and November 13, 2008 teleconferences with USPTO Examiner Louie.

A. Independent Claim 42

Independent claim 42 recites, *inter alia*, that the "processor is further configured to maintain said energy management data, but prevent said transmitting of said energy management data through said network interface, when said seal tamper detection unit detects that said tamper prevention seal indicates that unauthorized access has occurred."

No new matter has been added based on new independent claim 42 and its associated dependent claims 43-64. Support for new independent claim 42 may be found throughout applicants' specification, at least with respect to paragraph 0093 of applicants' corresponding published application (Pat. Pub. No. 2005/00039040), which recites, inter alia, that "EM Device

400 may discontinue 518 the sending of data to EM Network 270." Applicants respectfully submit that each of dependent claims 43-64 properly depends from new independent claim 42.

Independent claim 42 is a new, non-obvious improvement over the prior art. In particular, neither the Selph nor Shear references cited in the Final Office Action dated July 18, 2008, nor the additional Butturini nor Benson references cited by telephone on November 13, 2008, anticipate or render obvious independent claim 42.

First, as applicants have previously explained, neither Selph nor Shear teaches or suggests taking any internal protective actions, particularly in the manners noted in previously pending dependent claims 5-13, 15, 18, 23. Accordingly, applicants respectfully submit that for at least the reasons previously discussed with respect to Selph and Shear, neither reference teaches or suggests "the processor is further configured to maintain said energy management data, but prevent said transmitting of said energy management data through said network interface, when said seal tamper detection unit detects that said tamper prevention seal indicates that unauthorized access has occurred."

With regard to Butturini, the reference focuses on "forming a security enclosure having improved fold retention." (see, e.g., Butturini Abstract). Butturini further discloses "an encryption module 22 which carries the secured sensitive information, a memory 24 which stores a key or code necessary to access the stored information in the encryption module 22, an erase circuit 26 which erases the stored information in the encryption module 22 in the event the tamper respondent cloth 10 around the cryptographic processor card 20 is breached, an enclosure monitor 28 which monitors the resistence of the lines 14 of the cloth 10 and activates the erase circuit 26 in the event a breach is detected, and a battery 30...." (See Butturini at col. 4, lines 15-32; emphasis added). Accordingly, the only security feature disclosed or suggested in Butturini is "erasing" of stored information in the event of a tampering event.

As Butturini only discloses erasure of stored information, it therefore teaches away from independent claim 42, and in particular, "the processor is further configured to maintain said energy management data, but prevent said transmitting of said energy management data through said network interface, when said seal tamper detection unit detects that said tamper prevention seal indicates that unauthorized access has occurred."

With regard to Benson, the references focuses on a "system, method and apparatus for protecting circuit components from unauthorized access." (see, e.g., Benson Abstract). Benson

further discloses "preferred embodiments of the present invention actively protect against tampering by providing a tamper protection circuit which monitors various components and sensors on substrate 104 in order to detect a tampering attempt. These components and sensors may include conductive ink fuses to detect chemical attacks, a temperature sensor, and an embedded three-dimensional resistive network sensor. Key zeroing electronics may be provided to zeroize, i.e., destroy, sensitive programs and data contained in memories upon being triggered by these protective devices." (See, e.g., Benson at paragraph 54; see also paragraphs 61 and 66, and FIG. 4). Notably, in each instance, the only security feature disclosed or suggested in Benson is "zeroing" of stored information in the event of a tampering event, which is clearly defined as "destroying" or "erasing" sensitive programs and data. (see *Id.*)

Therefore, Benson, like Butturini, only discloses erasure of stored information, and therefore teaches away from independent claim 42, and in particular, "said processor is further configured to maintain said energy management data, but prevent said transmitting of said energy management data through said network interface, when said seal tamper detection unit detects that said tamper prevention seal indicates that unauthorized access has occurred."

In sum, unlike any of the prior art, applicants' device advantageously may maintain energy management data, and just prevent its transmission when a tampering event occurs. Such a device encompasses a new, nonobvious improvement over the prior art, which teach away from independent claim 42 by always mandating the destruction (i.e., zeroing) of information when a tampering event occurs.

For at least the reasons set forth above, applicants submit that independent claim 42 is in condition for allowance. Accordingly, new dependent claims 43-64 are allowable for at least the reasons given above regarding independent claim 42.

B. Independent Claim 65

Independent claim 65 recites, *inter alia*, a device "wherein said processor is further configured to maintain said energy management data, but configured to mark said energy management data as unreliable, when said seal tamper detection unit detects that said tamper prevention seal indicates that unauthorized access has occurred."

No new matter has been added based on new independent claim 65 and its associated dependent claims 66-76. Support for new independent claim 65 may be found throughout

applicants' specification, at least with respect to paragraph 0093 of the published application (e.g., "some owners or data users may not wish to receive any data that cannot be signed, whereas some owners or data users may still wish to receive data, with the knowledge that it may not be accurate, as it may be of more value than no data all.") and paragraph 0095 (e.g., "the data may be marked 540 with some identifier to indicate that a seal tampering event has been identified and that the data may be unreliable."). Applicants respectfully submit that each of dependent claims 66-76 properly depends from new independent claim 65.

Independent claim 65 is a new, non-obvious improvement over the prior art. In particular, neither the Selph nor Shear references previously cited anticipate or render obvious independent claim 65 for at least reasons previously provided.

Further, neither of the newly-cited Butturini and Benson references, whether alone or in combination, teach or suggest the invention of independent claim 65. Rather, as noted above, the only security feature disclosed or suggested in Butturini is "erasing" of stored information in the event of a tampering event, and Benson only describes "zeroing" of stored information in the event of a tampering event (i.e., "destroying" or "erasing" sensitive programs and data).

Therefore, since Butturini and Benson only disclose erasure of stored information, they each teach away from independent claim 65, and in particular, "said processor is further configured to maintain said energy management data, but configured to mark said energy management data as unreliable, when said seal tamper detection unit detects that said tamper prevention seal indicates that unauthorized access has occurred."

In sum, unlike any of the prior art, applicant's device advantageously may maintain energy management data, and simply mark it unreliable, which at least provides the owners with the ability to receive data, with the knowledge that it may not be accurate, as it may be of more value than no data all. Such a device encompasses a new, nonobvious improvement over the prior art, which teach away from independent claim 65 by always mandating the destruction (i.e., zeroing) of information when a tampering event occurs.

For at least the reasons set forth above, applicants submit that independent claim 65 is in condition for allowance. Accordingly, new dependent claims 66-76 are allowable for at least the reasons given above regarding independent claim 65.

C. Independent Claim 77

Independent claim 77 recites, *inter alia*, "a memory coupled with said processor and configured to store at least one device setting, wherein information of said at least one device setting is preserved when said seal tamper detection unit detects that said tamper prevention seal indicates that unauthorized access has occurred."

No new matter has been added based on new independent claim 77 and its associated dependent claims 78-82. Support for new independent claim 77 may be found throughout applicants' specification, at least with respect to paragraph 0094 of the published application. Applicants respectfully submit that each of dependent claims 78-82 properly depends from new independent claim 77.

Independent claim 77 is a new, non-obvious improvement over the prior art. In particular, neither the Selph nor Shear references previously cited anticipate or render obvious independent claim 77 for at least reasons previously provided.

Further, neither of the newly-cited Butturini and Benson references, whether alone or in combination, teach or suggest the invention of independent claim 77. Rather, as noted above, the only security feature disclosed or suggested in Butturini is "erasing" of stored information in the event of a tampering event, and Benson only describes "zeroing" of stored information in the event of a tampering event (i.e., "destroying" or "erasing" sensitive programs and data).

Therefore, since Butturini and Benson only disclose erasure of stored information, they each teach away from independent claim 77, and in particular, "a memory coupled with said processor and configured to store at least one device setting, wherein information of said at least one device setting is preserved when said seal tamper detection unit detects that said tamper prevention seal indicates that unauthorized access has occurred." Notably, dependent claim 78 further recites "wherein said processor is further configured to prevent changes to said at least one device setting after said seal tamper detection unit detects that said tamper prevention seal indicates that unauthorized access has occurred." Further, dependent claim 79 recites "wherein said processor is further configured to permit changes to said at least one device setting, and further is configured to send a message warning that said device setting has been changed through said network interface after said seal tamper detection unit detects that said tamper prevention seal indicates that unauthorized access has occurred." Finally, dependent claim 80 recites "wherein said processor is further configured to appear to make a change to said at least

one device setting after said seal tamper detection unit detects that said tamper prevention seal indicates that unauthorized access has occurred, but is operative to maintain a first copy of said at least one device setting as if no change was made and further operative to maintain a second copy of said at least one device setting based on a change," which is supported at least with respect to paragraph 94 of the published application.

In sum, unlike any of the prior art, applicant's device advantageously may preserve a device setting in the event of tampering. Such a device encompasses a new, nonobvious improvement over the prior art, which teach away from independent claim 77 by always mandating the destruction (i.e., zeroing) of information when a tampering event occurs.

For at least the reasons set forth above, applicants submit that independent claim 77 is in condition for allowance. Accordingly, new dependent claims 78-82 are allowable for at least the reasons given above regarding independent claim 77.

CONCLUSION

Each of the rejections in the Final Office Action dated July 18, 2008 has been addressed and no new matter has been added. Applicants submit that all of pending claims 42-82 are in condition for allowance and notice to this effect is respectfully requested. The Examiner is invited to contact the undersigned attorney if such communication would expedite the prosecution of this application.

Respectfully submitted,

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